

IN THE UNITED STATES MIDDLE DISTRICT OF ALABAMA

Courtney Boyd#208921
Plaintiff

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Vs.
Dr.Darbouze et.al.,
Defendants

2008 FEB 26 A 9:52

Case No:2:06-CV-511-WKW

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT

**MOTION TO OBJECT TO THE MAGISTRATE JUDGE
RECOMMENDATION ENTERED ON FEBRUARY 21,2008:**

Comes Now, The Plaintiff, Courtney Boyd, moves into this Honorable Court objecting to the Magistrate Judge Recommendation Entered on February 21,2008. The Plaintiff submit the following insupport of this Motion:

1. The Plaintiff received this Honorable Court Recommendation of the Magistrate Judge Coody, which he says that the plaintiff has not exhausted his administrative remedies, because he failed to appeal any grievance with his retaliation claim. Also Boyd failed to establish that the Defendants acted with deliberate indifference to his medically need. And there is no genuine issue that would require a trial.
2. The Plaintiff did filed a Appeal Grievance from challenging the retaliation of the Defendants on 5-17-06. But the Defendant Kay Wilson never filed it. The Plaintiff then even sign up for sick call, which is what the Defendant Wilson said for him to do, to get medical help. So on May 28,2006, The Plaintiff was seen by Nurse Bush, who set him a Doctor vist on 6-02-06. See Exhibit C, in the (Court No.126). After seen the Doctor, on 6-02-06, the Defendant Dr.Darbouze discontinuing the Plaintiff Back Brace and Bottom Bed Profiles.See Exhibit D in (Doc.No.126). After Doctor Darbouze did this the plaintiff then filed a Grievance From on 6-02-06, and on 6-14-06. The Defendant Wilson answer them back on 6-05-06 and 6-16-06. The Plaintiff then filed a Appeal Grievance From on 6-17-06, but never got an answer from the Defendant Kay Wilson or Health Service Head Department. This ~~was~~ *was* the plaintiff second time filing a Appeal Grievance From about the Retaliation against him, but never received an answer from anyone. The Plaintiff request that this Honorable Court does not ~~held him~~ *hold him* responsible, for the Defendant Kay Wilson not answering his Appeals Grievance From, and sending him something back. After the plaintiff did not get his first two Appeals Grievance From back, he started put a note on his other ones. See Exhibit's A-1, A-2-, A-3. Even when the

Defendants did answer the Appeal Grievance from, they still lied, about saying that the plaintiff would see a Dr.McQueen, because she (Dr.McQueen) is the only one who can overrule Dr.Darbouze. The Plaintiff was first told this lie on 5-01-07, and that he would see her on 5-3-07, which he never did, so he then filed a Inmate Grievance From on 5-7-07, asking Defendant Wilson "What did Dr.McQueen say about me. Ms.Wilson never answer my question. So then the plaintiff filed another Appeal Grievance From on 8-20-07, and got an answer on 8-23-07, Asking what happen to Dr.McQueen, and "What did she say about me". See Exhibits A-1, Which is the Appeal Grievance filed on 4-19-07, and A-2 is the Grievance From filed on 5-7-07, and A-3- is the a copy of the Appeal Grievance From filed on 8-20-07. The Plaintiff believe that it would never a Dr.McQueen, because the Defendants , never answer any question about her when the plaintiff wrote and asked them what she said about his back brace and back problems. The Plaintiff will like to point out that Prison Service is no longer working for ADOC, and the Plaintiff has not yet seen Dr.McQueen yet as the Defendant claim he would. Therefore, The Plaintiff did exhausted his administrative remedies, but Defendant Wilson never filed nither one of them.

3. The Deliberate indifference to serious medical needs of a prisoners constitutes unnecessary and wanton infliction pain proscribed by the Eight Amendment, regardless of whether the indifference is manifested by prison doctor in thier response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed; regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a civil rights cause of action under 42 USCS 1983. See Estelle Vs.Gamble 50 L.Ed.2d. at 254.

The Plaintiff was given a back brace on 7-1-03, because he was beaten by officer and they injured his back. The Plaintiff had a back brace and Bottom Bed until he went to Easterling Corr.Fac. After the Defendant Dr.Darbouze had discontinue the plaintiff Back Brace and Bottom Bed, he was seen by a Free World Doctor who said that the plaintiff has been given a life-long disability, Mr.Boyd has very minimal rehabilitation potential. See Exhibit B, which is a copy of Dr.Amy L. Bentley report done on the plaintiff on 8-18-06.

The Defendants knew that without his back brace and bottom bed , the plaintiff keep felling off the top bed hurting himself. See Exhibit B-1, which is a copy

of the body chart done on the plaintiff, when he had fell on his top bed. The plaintiff low back keep going out and some time he could not move, because he did not have his back brace. See Exhibit B-2, which is a copy of a Sick Call request done on 3-26-07.

In order for the plaintiff to meet Deliberate Indifference standard under Estelle vs. Gamble Surp, the plaintiff must show that he has been diagnosis with a back injury from what happen on 6-30-03. The Back brace and Bottom Bed was Prescribed to help out with the plaintiff back. The Defendants Dr.Darbouze took the plaintiff back brace and bottom bed profiles to cause him serious harm, which is what he did. the plaintiff fell down off his top bed on more then (4) times and the Defendants Dr.Darbouze still would not give the plaintiff his back brace back.

4. The Plaintiff is entitle to the jury trial that was granted to him on May 18,2007, because the Defendants retaliated against the plaintiff by taking his back brace and bottom bed profiles, because the plaintiff filed a Complaint to the Head Office, which the Defendants took out of the Mail and gave it to Capt.Knox saying that I was thartening them with this letter. See Exhibit C. On 5-1-06, The Plaintiff then filed a Grievance From, letting Ms.Wilson know, he had received her letter date on May 4,2006, Defendant Wilson 5-16-06, Respond by saying that the plaintiff need to sign up for sicl call, if you need medical help. See Exhibit C-1. On 5-28-06, The Plaintiff signed up for sick call, and was seen by nurse Bush, who set the plaintiff his doctor vist for 6-02-06. See Exhibit C, in (Doc No.126). On 6-02-06, The Defendant Dr.Darbouze discontinuing the plaintiff Back Brace & Bottom Bed. See Exhibit D in (Doc No.126). On 6-02-06, The Plaintiff filed a Grievance from, trying to get his back brace & bottom bed. On 6-05-06, Defendant Kay Wilson respond by saying. "Mr.Boyd at your appointment to see Dr.Darbouze he did not take your bottom bed & Back Brace profiles. You said you didn't want them & gave them back and you also took off your back brace off and gave it back. As you were explained to on that same day, he will not re-write for those profiles. See Exhibit C-2. On 6-14-06, The Plaintiff filed a second Grievance from, requesting for his back brace& bottom bed back. on 6-16-06, the Defendant Kay Wilson respond by saying "Mr.Boyd when you were seen by Dr.Darbouze at you appointments, there were was no profiles medically indicated. Dr. Darbouze did not say he was going to take your profiles back , you gave them & the brace to a nurse. See Exhibit C-3. The Plaintiff filed a Appeal Grievance from on 6-17-06, saying that the Defendants

are retaliating against him for filing a complaint to the head office on 5-4-06.

However the record clearly show that Dr.Darbouze discontinued the profiles, that he had just wrote on 4-21-06, for Six Months, which ended on 10-21-06. See Exhibit D in (Doc No.126). So why is Defendant Kay Wilson says that the plaintiff gave his back brace and bottom bed profiles back, and Dr.Darbouze did not take them. When he clearly says he did discontinued the plaintiff profiles on 6-02-06.

BURDEN OF PROOF

The burden of proof means that the plaintiff must prove that what he is saying happen on 6-02-06, happen more then it did not happen. This is all the plaintiff must prove to win his claim.

A Pro/Se Complaint, however inartfully pleaded must be held to less stringent standards then formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond that the plaintiff can prove no set of facts in support of his claim which would entitle him to relife. See Estelle vs.Gamble 429 U.S. 97, 50 L.Ed.2d. 251, 97 S.Ct.285.

RELIFE SOUGHT

The Plaintiff request that this Honorable Court re-call it's recommentation and set this matter down for a hearing, becuse the plaintiff has prove his claim, by a perponderance of the evidence.

WHEREFORE, The Plaintiff prays that this Honorable Court will grnat this Motion and re-call it recommendation and set this matter down for a hearing, because the plaintiff has prove his claim by a perponderance of the evidence.

CERTIFICATE OF SERVICE

I hereby certify that the I have served a copy of the foregoing upon the Defendants Counsel, by placing it into Ventress Corr.Fac. Mail Box On February 23,2008.


Courtney Boyd #208921

IN THE UNITED STATES MIDDLE DISTRICT OF ALABAMA

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Plaintiff

Vs.
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Defendants

Case No:2:06-CV-511-WKW

AFFIDAVIT INSUPPORT OF THE PLAINTIFF MOTION
TO OBJECT TO THE MAGISTRATE JUDGE RECOMMENDATION
ENTERED ON FEBRUARY 21,2008:

My Name is Courtney Boyd, and I'm over age of 21 years old and is incarcerated at Ventress Corr.Fac. at P.O.BOX 767 Clayton, Ala.36016.

I, The Plaintiff, Courtney Boyd, do hereby sworn that on 5-17-06 and 6-17-06, I filed a Appeal Grievance From against the Defendants for retaliating against me for filing a complaint to the Head office on 5-4-06. Also that I have been wearing a Back Brace every sense July 1,2003, and I have been given a life long disability due to my back being injury on June 30,2003, and I have very minimal rehabilitation potential. And The Defendants, knew this, beucase it is write in his Medical records, and they knew if they took his back brace and bottom bed , that he would hurt himself. SO the Defendants took the plaintiff back brace and bottom bed to casue him serious bodily harm. The Plaintiff hereby do says that he has prove his claim by a preponerance of the evidence. Therefore, becuase the plaintiff filed to Appeal Grievance from aruging retaliating, he exhausted his administrate remedies, and this was the plaintiff last remedies he had left.

I do hereby sworn that this Affdavit is ture and corrected.

Pursuant to 28 U.S.C. Section 1746, I , Courtney Boyd, do hereby sign under the penalty of perjury that the foregoing is true and corrected. Excuted on February 23,2008:


Courtney Boyd/Plaintiff #208921